CHONG CHOONG HING

v.

TAN YEE LEE (SEBAGAI PRESIDEN WAI FUNG WAN KENG PHILANTHROPIC AMATEUR DRAMATIC SOCIETY)

HIGH COURT MALAYA, SHAH ALAM
DATO' JAMES FOONG J
[CIVIL CASE NO. 22-449-1994]
27 MARCH 1995

***LANDLORD & TENANT**: Claim for trespass and vacant possession - Application for summary judgment - Section 20 Control of Rent Act 1966 - Plaintiff registered owner of double storey building - Defendant occupying 1st floor as tenants and sub-letting ground floor - Conversion of subtenancy into joint tenancy - Plaintiff entering into agreement with sub-tenants to vacate - Plaintiff applying for and obtaining certificates to decontrol premises - Defendant refusing to vacate and claiming right to occupy ground and 1st floors as lawful tenant - No notices served on defendant as chief tenant - Effect - Consideration of ss. 20(2) & 20(e) the Act - Legal position of the premises upon surrender of vacant possession by subtenants - Whether the provisions of the Act apply to decontrolled premises - s. 24(2).*

***PRACTICE & PROCEDURE**: Application for summary judgment to restrain defendant and his agent from entering and remaining on plaintiff's premises and for vacant possession - Premises subject to Control of Rent Act 1966 - Plaintiff obtaining certificates to decontrol premises - Conversion to joint tenancy - Subtenants vacating premises - Defendant not served any notices as chief tenant - Whether defendant had legal right to remain as tenant - Consideration of ss. 20(2), 20(e) & 24(2) of the Act - Plaintiff raising issue not pleaded - Whether issue may be considered - Whether proper case for summary judgment.*

The plaintiff was the registered owner of a double storey building under the Control of Rent Act 1966 (the Act). The defendant was the president of an association which were the tenants of the said property since 1941 occupying the 1st floor and sub-letting the ground floor (the premises) to two individuals (the subtenants). On 6 November 1993 and 10 January 1994 respectively, the plaintiff issued letters to the subtenants accepting them as joint tenants. Thereafter the subtenants entered into an agreement with the plaintiff to vacate the premises. The plaintiff then proceeded to apply to the Rent Tribunal to decontrol the premises. The relevant certificates decontrolling the premises were issued on 3 August 1994. Meanwhile, the defendant and his association discovering that the subtenants had vacated, took occupation of the ground floor and refused to leave claiming that when the subtenants left the premises, the same should revert to them as chief tenants. They further claimed that they had not been served with notification of the conversion of the subtenancies into joint tenancies nor the certificates issued by the Rent Tribunal.

The plaintiff brought an action against the defendant for trespass and vacant possession and filed the present application for summary judgment to restrain the defendant or his agents and servants from entering and remaining on the premises. The plaintiff contended that he had the right to occupy the premises since the surrender of the premises by the subtenants meant that the joint tenancies were terminated. The plaintiff argued that as the said premises had been decontrolled, the provisions of the Act no longer applied and the defendant had no right to occupy the premises. The plaintiff also raised an issue that the defendant's association was incompetent to hold a tenancy as s. 9(b) of the Societies Act requires

immovable property of a society to be held by trustees if not, the instruments relating to the holding of such property must be executed by 3 office-bearers of the society.

Held:

[1] Section 20 of the Control of Rent Act 1966 allows the landlord to treat existing subtenants of his property to be joint-tenants upon notification to the 'tenant', and thereupon the joint-tenancies shall exist as if the landlord himself has directly let such premises to such subtenants but s.20(2) of the Act expressly requires the landlord intending to exercise such right to serve notice of such intention on the tenant. Though there was notification to create the subtenants as joint-tenants, there was no evidence of such notification served on the defendant or his association as tenants. Such being the case, s.20(e) of the Act provides that "where no such notification is made the subtenancy so created by the tenant shall continue as subtenancy." Therefore, the attempt by the plaintiff to turn the subtenancies into joint-tenancies were futile and the subtenants remained as subtenants at all material times.

[2] When the subtenants surrendered and delivered possesssion of the premises to the plaintiff, it tantamounted to a termination of their respective subtenancies, but such termination must be with the chief tenant for under common law subtenancies flow from the main tenancy and can have no independant existence apart from the main tenancy. Once the subtenancies were terminated the premises should revert back to the defendant or his association as chief tenant since the main tenancy is still in existence. The plaintiff can only be in possession of the premises with the consent of the chief tenant otherwise the plaintiff would be in breach of a fundamental term of the tenancy for failing to provide quiet enjoyment of the said property.

[3] There is no provision in the Act for the expulsion of any person occupying premises that are decontrolled. Section 24(2) only expresses that a person holding over in a decontrolled premise is deprived of the enjoyment and benefits of the Act; it does not provide that that person is a trespasser. Further, in order for premises to have the effect of a decontrolled premise, the certificate issued by the Rent Tribunal to decontrol must be served on the 'tenant' as provided for under s. 24(2) of the Act. In the context of this case the 'tenant' to be served with such certificates must be the subtenants for it was they who surrendered their premises under s. 24(1)(b) of the Act in order to enable the plaintiff to apply to decontrol the premises. However, there was no evidence adduced by the plaintiff to indicate that such certificates were duly served on the 'tenant'.

[4] The issue raised by plaintiff's Counsel that the defendant's association is imcompetent to hold a tenancy was never pleaded and as such the Court cannot entertain this contention.

[5] The plaintiff's case cannot be regarded as "virtually uncontested or uncontestable" to justify summary judgment to be granted. Accordingly, the plaintiff's application is dismissed with costs.

[Application dismissed with costs].

Cases referred to:
Loke Yung Hong v. Ng See Lee [1948] 14 MLJ 123
Tham Kwee Sin v. Gan Kay Beng [1980] 1 MLJ 195
Vengadasalam v. Khor Soon Weng & Ors. [1985] 2 MLJ 449

Legislation referred to:
Control of Rent Act, 1966 ss. 20, 20(2), 20(e), 24(1)(b) & 24(2)
Societies Act, s. 9(b)

For the plaintiff - S.T. Lee; M/s. S.T. Lee & Partners
For the defendant - T.C. Tan; M/s. Raja Eleena Siew Ang & Tan

JUDGMENT

James Foong J:

The plaintiff is the owner of a double story building known as No. 26, Jalan Maxwell, Kuala Kubu Baru, Selangor (hereinafter shall be referred to as "the said property"). The defendant is the President of an association which are tenants of the said property since 1941. The defendant's association occupies the 1st floor of the said property while the ground floor was sub-let by the defendant's association;

(a) to one Thien Yee ("Thien" for short) the front right portion measuring 8' x 60' at a monthly rental of RM46.50 since 1955 and;

(b) to Choo Ah Ngau ("Choo" in short) for the left half portion measuring 8' x 60' at a monthly rental of RM42.50 since 1983.

There is no dispute between the parties that the said property is a rent controlled premises governed by the provisions of the Control of Rent Act 1966 before 3 August 1994.

When the plaintiff became the registered owner of the said property in 1993, he issued through his solicitors a letter to;

(a) Choo on 6 November 1993 accepting Choo as a joint-tenant; and

(b) Thien on 10 January 1994 accepting Thien as a joint-tenant.

On 25 November 1993 and 2 February 1994 the plaintiff entered into an agreement with Choo & Thien respectively for premises occupied by them (hereinafter these premises shall be jointly referred to as "the said premises") to be vacated and possession handed over to the plaintiff for a consideration of RM1,000 each. On or before 1 December 1993 and 1 March 1994 Choo and Thien respectively vacated the said premises and handed the same to the plaintiff. The plaintiff then proceeded to apply to the Rent Tribunal to decontrol the said premises. The Rent Tribunal on 3 August 1994 issued certificates decontrolling the said premises. The defendant and his association having got wind that Choo and Thien had vacated the said premises immediately in July 1994 went downstairs and occupied the same. They now refuse to leave claiming that they have every right to remain as lawful tenants of the said premises. They based their reason on the assumption that they have always been tenants of the said property which the said premises is part thereof, and as such, when Choo and Thien left the said premises, the same should revert back to them as chief tenants. The defendant also pleaded that he or his association have no knowledge of the attempts by the plaintiff to convert Choo's and Thien's subtenancies into joint-tenancies since no notifications were ever served on him or his association, nor was he or his association served with any certificates issued by the Rent Tribunal declaring the said premises as decontrolled.

The plaintiff dissatisfied with the occupation by the defendant and his association on the said premises brought an action against the defendant for trespass and prayed for vacant possession of the same. He then proceeded to apply for summary judgment to restrain the defendant his agents and servants from entering and remaining on the said premises and that they do vacate the same. This is the application before this Court for determination.

The plaintiff's main contention is that he has every right to occupy the said premises since the same were surrendered to him by the joint-tenants, Choo and Thien. By such surrender these joint-tenancies were terminated giving him the right to apply for the said premises to be decontrolled.

Section 20 of the Control of Rent Act 1966 (hereinafter shall be referred to as "the said Act") allows the landlord to treat existing subtenants of his property to be joint-tenants upon notification to the 'tenant', and thereupon the joint-tenancies shall exist as if the landlord himself has directly let such premises to such subtenants. Though it is not in dispute that the plaintiff has every right to such election, of which he has exercised, but s. 20(2) of the said Act expressly requires the landlord intending to exercise such right to serve notice of such intention on the tenant. The "tenant" obviously in this case refers to the defendant and his association for the purpose of this exercise is to terminate and/or assign such subtenancies from the chief tenant to the landlord. Without any such notification how would the chief tenant be expected to know of this change and/or deprivation of their contractual rights with their subtenants. Though there are notifications to create Choo and Thien as joint-tenants there is no evidence of such notification served on defendant or his association as tenants. Such being the case, s. 20(e) of the said Act provides that "where no such notification is made the subtenancy so created by the tenant shall continue as subtenancy." The attempts of the plaintiff to turn the subtenancies of Choo and Thien into joint-tenancies were therefore futile and Choo and Thien remained as subtenants at all material times.

In consequent to the above, the next issue would be the legal position of the said premises when Choo and Thien surrendered and delivered possession of the same to the plaintiff. These acts of Choo and Thien certainly tantamount to a termination of their respective subtenancies, but such termination must be with the chief tenant for under common law subtenancies flow from the main tenancy and can have no independent existence apart from the main tenancy - see also the case of *Loke Yung Hong v. Ng See Lee* [1948] 14 MLJ 123. Once these subtenancies were terminated, the premises should revert back to the defendant or his association as chief tenant since the main tenancy to the said property is still in existence. The plaintiff in possession of these premises can only do so with the consent of the chief tenant otherwise the plaintiff would be in breach of the fundamental the term and condition of the tenancy with his chief tenant for failing to provide quiet enjoyment of the said property.

The plaintiff next argued that the said premises have been duly decontrolled by the Rent Tribunal, and when such premises are decontrolled, the provisions of the said Act no longer apply. Such being the case, the defendant or his association has no right to occupy the said premises.

The said Act never makes any provision for the expulsion of any person occupying premises that are decontrolled. Section 24(2) of the said Act only expresses that a person holding over in decontrolled premises is deprived of the enjoyment and benefits of the said Act; it never provides that person is a trespasser and should be evicted from the such premises. Under these principles, this Court finds no merits in the plaintiff's above contention especially when the plaintiff himself may not even have the legal right to the said premises in the first place. Further, in order for premises to have the effect of decontrolled premises, the certificate issued by Rent Tribunal to decontrol such premises must be served on the 'tenant' as provided for under s. 24(2) of the said Act. In the context of this case, the 'tenant' to be served with such certificates must obviously be Choo and Thien for it was they who surrendered their premises under s. 24(1)(b) of the said Act in order to enable the plaintiff to

purportly apply to decontrol the said premises. However, there is no evidence adduced by the plaintiff to indicate that such certificates were duly served on the 'tenant'. As stated by Ajaib Singh J in the case of *Tham Kwee Sin v. Gan Kay Beng* [1980] 1 MLJ 195, "these provision must be strictly complied with and failure to do so will render ineffective any attempts at decontrolling the premises concerned."

At the initial stage of this hearing, the plaintiff's Counsel raised an issue that the defendant's association is incompetent to hold a tenancy to the said property. This is for reason that s. 9(b) of the Societies Act requires immovable property of a society to be held by trustees if not, the instruments relating to the holding of such property must be executed by 3 office-bearers for the time being of the society. As decided in the case of *Vengadasalam v. Khor Soon Weng & Ors.* [1985] 2 MLJ 449 "a tenancy cannot be granted to an unincorporated society which has no legal personality as it is only a composite entity of fluctuating content and not a *persona legalis.*" Based on these, the defendant and his association (which is a society) have no legal right to be tenants and remain in the said property in general and the said premises in particular.

This, certainly is a completely new allegation which was never pleaded or even mentioned in the affidavit of the plaintiff filed in support of this application for summary judgment. In para. 3 of the plaintiff's statement of claim, the plaintiff has even admitted that the defendant's association is his tenant to the first floor of the said property. Further, from the plaintiff's own narration of the events leading to his purported attempt to convert the subtenancies of Choo and Thien into joint-tenancies clearly implies that he has accepted the existence of the defendant or his association's tenancy to the said premises. If the plaintiff wishes to deny the legal existence of defendant or his association's tenancy, he should have pleaded the same as a ground to support his prayers for trespass and eviction instead of relying on the existence of a tenancy either governed by or excluded from the provisions of the Control of Rent Act. As this matter was never pleaded, this Court cannot entertain this plaintiff's contention.

Based on the reasons aforesaid, the plaintiff's case cannot be regarded as "virtually uncontested or uncontestable" to justify summary judgment to be granted. Accordingly, this Court rejects the plaintiff's application (encl. 8) with cost.